

Rutherford County Government

Stormwater Enforcement Response Plan



Introduction

The intent of this document is to provide guidance to Rutherford County officials in enforcing the Stormwater Management Ordinance. It should be used only as a guide while recognizing that each situation is unique. The provisions of this enforcement response plan are not mandatory. Actual enforcement procedures should consider any unusual aspects of a violation or condition, as well as special characteristics of an enforcement action in determining the proper response.

While the purpose is to provide guidance for administration of the Stormwater management ordinance, it is not intended to limit the judgment and flexibility of the Rutherford County Building Codes Director or his/her designee (referred to hereafter as "Rutherford County Building Codes Director") in determining the appropriate response.

Minor infractions may be resolved by a verbal notice, telephone call or warning letter advising the owner/operator/person of the nature of the violation. If such action fails to generate a response by the owner/operator/person, further enforcement actions as provided by the ordinance may be taken.

Enforcement Response

The order of enforcement responses outlined in this guide should not be construed to prevent the Rutherford County Building Codes Director from taking stronger action without first implementing less stringent steps, if in his/her opinion, a more forceful response is necessary.

A show cause hearing should be held prior to any enforcement action other than a telephone call, warning letter, or notice of violation (NOV). The Rutherford County Building Codes Director may order any person who violates the Stormwater Management Ordinance or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and the place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten(10) days prior to the hearing.

Documented Phone Calls or Informal Discussions

In the case of most minor violations of a permit or ordinance, a telephone call or informal meeting may be sufficient to obtain the desired compliance. Phone calls must be documented by contemporaneous notes. A copy of the notes should be placed in the owner's master file and another mailed to the owner.

Likewise if an informal discussion is held, notes shall be kept summarizing the discussion. Copies of the notes should be distributed to all entities involved. Anyone wishing to take exception to the notes should be required to respond in writing.

Warning Letter

A warning letter is the lowest level of formal response to a violation. It is intended for minor violations which would not cause harm to the environment.

Notice of Violation

A notice of violation (NOV) is an official notification to inform a non-compliant owner of a violation of the Stormwater management ordinance. Within ten (10) business days of receipt of the notice, a written explanation of the violation and a plan for satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the owner to the Rutherford County

Building Codes Director. Inspection to ensure performance of any corrective actions may be conducted by the Rutherford County Engineer at his/her discretion. Submission of this plan in no way relieves the owner of liability for any violations occurring before or after receipt of the Notice of Violation.

Administrative Orders

Administrative Orders are enforcement documents which direct owners to perform or to cease specific activities. Administrative orders may also invoke a penalty. There are three (3) primary types of administrative orders: (1) consent orders; (2) compliance orders; and (3) cease and desist orders.

Consent Orders are entered into between Rutherford County and the owners to assure compliance as to specific actions to be taken by the owner to correct non-compliance within a specific time period. The Rutherford County Building Codes Director may enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with any owner responsible for noncompliance within a time period specified in the document. Such documents shall have the same force and effect as administrative orders issued pursuant to Chapter 8 of the Stormwater Management Ordinance.

Compliance Orders may be issued when the Rutherford County Engineer finds that the owner has violated, or continues to violate, the ordinance or an order issued thereunder. It is similar to a consent order except that the consent of the owner is not implied in its issuance. When the Rutherford County Engineer finds that an owner has violated or continues to violate a section of this article, or a permit or order issued under this article, the Rutherford County Building Codes Director may issue an order to the owner responsible for the violation directing that the owner come into compliance within a specified time, and such order may include assessment of a civil penalty to be paid if the owner does not come into compliance within the time provided. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged offsite. A compliance order does not relieve the owner of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against or a prerequisite for taking any other action against the owner.

Cease and Desist Orders may be issued when the Rutherford County Engineer finds that an owner has violated, or continues to violate, the Stormwater Management Ordinance or an order issued thereunder. The order shall require that the owner:

- a. Comply forthwith;
- b. Take such appropriate remedial or preventative action as may be needed or deemed necessary to properly address a continuing or threatened violation, including halting operations and terminating the discharge. Issuance of a cease and desist order shall not be a bar against or a prerequisite for taking any other action against the owner.

All Administrative Orders contain at least the following components:

1. Title – the title specifies the type of order being issued, to whom it is being issued, and summarizes the purpose of the order, contains an identification number and identification of the property.
2. Legal Authority – The authority under which the order is issued (the Stormwater Management Ordinance).

3. The Finding of Noncompliance – All violations must be described including the dates, the specific permit and/or ordinance provisions violated, and any damages known and attributable to the violation.
4. Required Activity – All orders should specify the required actions such as installation of BMP's, additional inspections, appearance at show cause hearings, etc.
5. Milestone Dates for Corrective Actions – When compliance schedules are appropriate, all milestone dates must be established including due dates for required written reports.
6. Supplemental Clauses – The document should contain standard clauses providing that:
 - a. Compliance with the terms and conditions of the administrative order shall not be construed to relieve the owner of its obligation to comply with applicable state, federal or local law, or the permit;
 - b. Violation of the administrative order itself may subject the owner to additional penalties as set in the Stormwater Management Ordinance;
 - c. No provision of the order shall be construed to limit Rutherford County officials' authority to issue supplementary or additional orders, or to take action deemed necessary to implement this program or ordinance;
 - d. The orders shall be binding upon the owner, its officers, directors, agents, employees, successors, assigns, and all persons, firms or corporations acting under, through or on behalf of the owner.

Administrative orders issued as a result of a violation of the Stormwater Management Ordinance shall contain a penalty as determined using Tables 'A' and 'B' in this document. Administrative orders may also be used to advise an owner of the need to take, or cease, certain actions, and in such case may or may not be associated with penalties as defined in the ordinance or in this guide.

Other Remedies

Rutherford County officials may bring legal action to enjoin the continuing violation of the Stormwater Management Ordinance or any Administrative Order, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

Civil Penalties

The Stormwater Management Ordinance authorizes assessment of penalties of not less than fifty dollars (\$50.00) and not to exceed five thousand dollars (\$5,000.00) per day for each day of violation. Additionally Section 14-610 of the Stormwater Management Ordinance authorized the Rutherford County Building Codes Director to assess a civil penalty for actual damages incurred by the Rutherford County. Before assessment of any civil penalty, a show cause hearing must be held with the non-compliant owner.

If a violation results in conditions requiring the expenditure of public funds for mitigation of damages, a penalty shall be assessed in such amount as to offset the public funds so expended. This will in no way reduce or offset the liability of the owner with respect to damages incurred.

Explanation of Use of Tables

This guide is based primarily on the use of two tables; "A" and "B". Table "A" indicates how point values are assigned for each violation, considering the severity, duration, degree of harm, and

compliance history of the owner. All possible violations may not be listed; however, this does not preclude an appropriate enforcement response.

In Table "A", three columns are associated with each listed violation – the "Initial Points" column, the "repeat Value" column, and the "Cumulative" column. If no history of violations is noted, the value in the "Initial Points" column may be used with conjunction with Table "B" to assess a typical response to the violation.

If the user has a history of similar violations, the initial point value plus the product of the number of the previous occurrences times the repeat value should be used as shown in the following formula:

$$\text{Total Point Value} = P + (N \times R), \text{ where,}$$

P = Initial Point Value for a single violation

N = Number of previous occurrences

R = Repeat Value from Table "A"

Should more than one violation be noted at a time, the cumulative column should be consulted. If violations are cumulative in nature, the sum of the individual point values should be used to judge the response. If not, the greater individual values should be used to judge response, with the documentation for that response noting all violations.

Once a point value is determined, Table "B" should be consulted for recommended responses. Table "B" provides a schedule of appropriate responses bases upon the number of "points" determined by Table "A".

Example

An owner violated the terms of the Stormwater Management Ordinance. This violation is considered significant and causes harm. Investigation reveals the owner has been cited twice in the past for the same violation:

$$\text{Total Point Value (TP)} = P + (N \times R).$$

$$\text{Therefore: TP} = 3 + (2 \times 1) = 5, \text{ where:}$$

3 = Points charged for isolated but significant discharge from Table "A"

2 = Number of previous occurrences; and

1 = Repeat value from Table "A"

Resulting Options: Civil injunction or Administrative order with up to a \$500.00 penalty.

Table "A"
Response Guide for Violation

Erosion Prevention and Sediment Control			
Description of Violation	Initial Points	Repeat Value	Cumulative
Violation of a Single Requirement:			
Not Significant	1	1	Yes
Significant, no harm	2	1	Yes
Significant, causes harm	2	1	Yes
Violation of More than one Requirement:			
Not Significant	2	1	Yes
Significant, no harm	3	1	Yes
Significant, causes harm	4	1	Yes
Unauthorized Discharges			
Illicit Discharges:			
Owner unaware of requirement, no harm	1	N/A	No
Owner unaware of requirement, harm	2	N/A	No
Owner aware of requirement, no harm	2	1	Yes
Owner aware of requirement, harm	3	1	Yes
Illicit Connections:			
Owner unaware of requirement, no harm	1	N/A	No
Owner unaware of requirement, harm	2	N/A	No
Owner aware of requirement, no harm	2	1	Yes
Owner aware of requirement, harm	3	1	Yes
Inspection			
Entry denied	2	2	Yes
Inspection Records Incomplete	1	2	No
Inspection Records Not Available	1	2	No
Maintenance			
Failure to properly operate and maintain BMPs	1	1	Yes
Stormwater Management			
Pre-Construction:			
Failure to obtain NOC	2	1	No
Failure to obtain grading permit	2	1	No
Failure to provide performance bond/letter of credit	2	1	No
Post Construction:			
Failure to provide water quality BMPs	2	2	No
Failure to provide channel protection	2	2	No
Failure to provide downstream impact analysis	2	2	No

Table "B"
Violation Response Guide

Point Total	Action
1	Written Warning
2	Notice of Violation
3	Administrative Order with up to a \$150 Penalty
4	Administrative Order with up to a \$300 Penalty
5	Administrative Order with up to a \$500 Penalty
6	Administrative Order with up to a \$1000 Penalty
7	Administrative Order with up to a \$2000 Penalty
8	Administrative Order with up to a \$3000 Penalty
9	Administrative Order with up to a \$4000 Penalty
10	Administrative Order with up to a \$5000 Penalty

Cease and Desist Order

A civil injunction may be requested at any time, for any violation, if in the opinion of the Rutherford County Building Codes Director in consultation with the County Attorney, such action is needed or appropriate.

Criminal Action

In cases where criminal acts are suspected by the Rutherford County Building Codes Director, after consultation with the County Attorney, information shall be gathered and forwarded to the District Attorney of the appropriate county for action. Criminal prosecution, if pursued, shall be in addition to other actions authorized by the Stormwater Management Ordinance.